

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Application No.: 10/501,548

REMARKS

In response to the rejection of claims 3 and 4 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1 and 4 of US Patent 6,709,464, claims 3 and 4 have been canceled. Withdrawal is respectfully requested.

In response to the rejection of claims 1, 2 and 5-11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of US Patent 6,709,464 to Kono et al in view of US Patent 5,703,185 to Blair, the common assignee submits herewith a Terminal Disclaimer disclaiming the terminal part of the statutory term of any patent granted on the present application which would extend beyond the expiration date of the full statutory term of prior Patent No. 6,703,464. US Patent No. 6,703,464 is assigned to Daikin America, Inc. of Orangeburg, New York, which is a wholly owned 100% subsidiary of Daikin Industries, Ltd. of Japan (the assignee of the present application). That is, both US Patent 6,703,464 and the present application are commonly owned by the parent company. See MPEP § 706.02(l)(2) at page 700-53 (Rev. 2, May 2004).

Withdrawal of the obviousness-type double patenting rejection is respectfully requested.

Claims 1, 2 and 5-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent 6,709,464 to Kono et al in view of US Patent 5,703,185 to Blair.

Applicants respond as follows.

Kono et al issued March 9, 2004, based on an application filed January 17, 2002. The present claims are entitled to the PCT filing date of January 17, 2003, which is prior to the March 9, 2004 issue date of US Patent 6,703,464. Therefore, Kono et al is not available as prior art

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under any of § 102(a) and § 102(b). Also, because of identity in inventorship entity, Kono et al is also not available as prior art under § 102(e). Namely, Kono et al is not prior art against the present claims. The publication date of US 2003/0153701 A1 (i.e., the published patent application of Kono et al) is August 14, 2003, which is also subsequent to Applicants' January 17, 2003 PCT filing date.

Because the rejection relies primarily on Kono et al, which is not prior art against the present claims, withdrawal of the foregoing rejection under 35 U.S.C. § 103(a) is respectfully requested.

Withdrawal of all rejections and allowance of claims 1, 2 and 5-11 is earnestly solicited.

In the event that the Examiner believes that it may be helpful to prosecution of this application, the Examiner is invited to contact the undersigned at the local Washington, D.C. telephone number indicated below.

Respectfully submitted,



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